

**Appl. No. 10/803,319**  
**Amendment dated October 13, 2006**  
**Reply to Office Action of July 14, 2006**

**REMARKS**

Applicant is in receipt of the Office Action mailed on July 14, 2006, in which the Examiner entered a Restriction Requirement for original Claims 1-24. The Restriction Groups were set out as follows:

**Group I.** Claims 1-10 drawn to a method for selecting maximum size for catalyst particles;

**Group II.** Claims 11-24 drawn to a method for producing hydrocarbons.

Furthermore, Claims 14 and 18 were rejected as being unpatentable over 35 USC § 112, second paragraph; and Claims 18-24 were rejected based on 35 U.S.C. § 103(a) as being unpatentable over Maretto et al. U.S. Patent No. 6,348,510 (hereinafter "Maretto"). The Examiner also indicated that the application contained allowable subject in Claims 11-13 and 15-17.

By this amendment and reply, Applicant intends to confirm the election of invention, take the allowable subject forward and correct that indefiniteness that was noted by the Examiner and move this application into immediate condition for allowance.

**Election of invention:**

Applicant confirms the election without traverse of the invention of Group II. With this Response, Applicant cancels non-elected Claims 1-10 without prejudice in order to add new Claims 25-34. Applicant reserves the right to prosecute non-elected Claims 1-10 (now canceled) of Group I in a later divisional application.

Applicant respectfully requests the Examiner to consider these new Claims 25-34 as part of the elected invention of Group II as identified in the Restriction Requirement dated July 14, 2006, so that the invention of Group II is now represented by Claims 11-34.

**Status of the claims:**

By this reply, Claims 1-10 are canceled; Claims 25-34 are new; Claims 14 and 18 have been amended; and Claims 11-13, 15-17 and 19-24 stand as originally filed.

As a result, Claims 11-34 are currently pending.

**Rejections based on 35 USC § 112, 2<sup>nd</sup> paragraph**

The Examiner rejected claims 14 and 18 under 35 U.S.C. § 112, second paragraph, as

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indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention because the letter "M" was not defined by the claims. Applicant respectfully traverses this rejection, as the letter 'M' and the other terms of the equation providing  $Re_{avg}$  are clearly defined in the specification as filed by Applicant- see for example paragraph [0045] on page 17 of the specification. Thus the language in Claims 14 and 18 is believed to be definite since one of ordinary skill in the art would understand what is claimed in light of the specification.

Nonetheless, Applicant has imported the definition of 'M' into Claims 14 and 18 as well as other definitions of the terms 'N' and ' $Re_i$ '. These amendments are believed to cure the Examiner's stated rejections based upon 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, and Applicant respectfully requests the withdrawal of such rejection.

**Rejections based on 35 USC § 103**

The Examiner rejected claims 18-24 under 35 U.S.C. § 103 as being obvious over *Maretto*.

By this response, Claim 18 was amended to add the following recitation into step (a): "Selecting the fresh catalyst particles such that the fresh catalyst particles have Archimedes numbers between about 0.02 and about 250, the Archimedes numbers being defined by  $Ar = \frac{gd_p^3 \rho_L (\rho_p - \rho_L)}{\rho_L^2 g u_L^2}$ ". This amendment is supported by the application as filed, for example by at least step (a) in originally filed Claim 11.

Applicant concurs with the Examiner's statement on Page 6 of the Office Action dated July 14, 2006, which pointed out that *Maretto* does not teach nor suggest the selection of catalyst particles having Archimedes numbers between about 0.02 and about 250. As such, *Maretto* fails to teach each and every element of such claims and there is no motivation in *Maretto* to modify their teaching to arrive to the present claimed invention. Thus, Claims 18-24 are not *prima facie* obvious over *Maretto*, and Applicant respectfully traverses the 103 rejection on such claims and respectfully requests the Examiner to withdraw the such rejection.

**New Claims**

Applicant added new Claims 25-34 in order to cover additional embodiments of a process for producing hydrocarbons to which the Applicant is entitled. Applicant believes that new Claims 25-34 are supported by the application as filed and do not constitute new matter.

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New Claims 25-28 ultimately depend from allowed Claim 11. Claims 25-28 are supported as follows (all cited paragraph numbers originate from the specification as filed):

- **Claim 25** is supported by at least original Claim 19 and paragraph [0010] on Page 4 and [0036] on Page 14 of the specification as filed;
- **Claim 26** is supported by at least original Claim 20 and paragraph [0010] on Page 4 and [0036] on Page 14 of the specification as filed;
- **Claim 27** is supported by at least original Claim 22; and
- **Claim 28** is supported by at least original Claim 24.

Each of Claims 25-28 dependent from Claim 11 carries all of the limitations of such claim which is allowable.

As such, new Claims 25-28 are *a fortiori* allowable as well.

**Claim 29** is a new independent claim from which new **Claims 30-34** depend, and covers another embodiment of the process of making hydrocarbons. Claims 29-34 are supported as follows (all cited paragraph numbers originate from the specification as filed):

- **Claim 29** is supported by at least original Claim 11; paragraph [0025] on Page 10 and paragraph [0027] on Page 11 of the specification;
- **Claim 30** is supported by at least original Claim 4 (now canceled) and paragraph [0027] on Page 11 of the specification;
- **Claim 31** is supported by at least paragraph [0027] on Page 11 of the specification;
- **Claim 32** is supported by at least original Claim 15;
- **Claim 33** is supported by at least original Claim 16; and
- **Claim 34** is supported by at least original Claim 17.

Claim 29 recites all of the limitations of Claim 11 and an additional limitation covering the maintenance of a catalyst non-uniformity of less than 4. As such, Claim 29 is narrower in scope than original Claim 11 which is allowed.

Thus, new Claim 29 and its dependent new claims 30-34 are *a fortiori* allowable as well.

#### Amendments to the Specification

The paragraphs [0015] on Page 6 and paragraph [0021] on Page 8 of the specification as filed

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have been amended to include the U.S. patent numbers of the disclosed patent applications that were not available at the time the present application was filed.

The paragraph [0028] on Page 11 of the specification as filed has been amended to correct grammatical errors in the written conditional and main clauses. To reflect that this paragraph covers examples of prophetic scenarios, *Type I* conditional sentences are preferable, in that the tense in the 'if clause is the simple present, and the tense in the main clause is the simple future (i.e., will). Thus, Applicant changed the verbs 'was' or 'were' with 'is' in the conditional clauses on the third, fourth and sixth lines of this paragraph and change the verbs 'would' with 'will' in the main clauses on the fifth and eighth lines of this paragraph.

No new matter was added by way of amendment to these paragraphs of the originally filed specification.

**Conclusion**

Applicant believes that this reply fully responds to the Office Action dated July 14, 2006.

Applicant further believes that no new matter was added by way of amendments to the claims and the specification as well as by addition of new claims.

Applicants respectfully ask the Examiner to consider the new Claims 25-34 as being part of the elected invention of Group II.

Applicant submits that all pending Claims 11-34 in their current form are in condition for allowance. Favorable action at the Examiner's earliest convenience is respectfully solicited.

Applicant further believes that the cancellation of ten claims (i.e., Claims 1-10) in this Response is sufficient to cover the addition of ten new claims (i.e. Claims 25-34) so that no additional claim fee is required.

However, should any fees have been inadvertently omitted, or if any additional fees are required or have been overpaid, or in the event that an extension of time is necessary in order for this submission to be considered timely filed, the Commissioner is authorized to please appropriately charge or credit those fees to Deposit Account Number 16-1575 of ConocoPhillips Company, Houston, Texas and consider this a petition for any necessary extension of time.

If resolution of any remaining issues pertaining to restriction groups and election may be facilitated by a telephone conference, or if the Examiner has any questions or comments or otherwise

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feels it would be advantageous, the Examiner is encouraged to telephone the undersigned at (281) 293-4751.

Respectfully submitted,

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**IP LEGAL**



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